UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

RAUCH INDUSTRIES, INC., Plaintiff, vs. MIDWEST-CBK, LLC, Defendant.	Civil No. ________________ **COMPLAINT AND JURY DEMAND**

Plaintiff Rauch Industries, Inc., by and through its undersigned counsel, brings this action against Defendant Midwest CBK, a Delaware corporation with its principal place of business in Canon Falls, MN for trademark infringement as follows:

INTRODUCTION

Rauch Industries, Inc. ("Rauch") brings this action to redress a direct competitor's intentional and willful infringement of Rauch's registered trademarks. Specifically, Midwest-CBK, LLC ("Midwest") has knowingly and intentionally adopted and used a trademark identical to Rauch's registered SHINY BRITE® marks throughout its 2017 catalog and marketing approach. Most troubling, Midwest denied that its conduct was intentional or knowing, but suggested that it was an honest mistake and thereafter tried to mask its wrongdoing. But, after the initial discovery of the improper use of the mark, Rauch further discovered that Midwest was not only using an identical mark, but was selling ***identical products*** to those sold by Rauch under the very same brand. These are not merely the same type of products—in this case Christmas ornaments. They are the very same Christmas ornaments—with all the same lettering and artwork. In other words, Midwest had not only misappropriated the trademark, but it had gone to vendors to have them manufacture products identical to those products that Rauch has been selling under the mark.

There is no question that Midwest's conduct was a knowing and deliberate attempt to trade on the goodwill of Rauch. Both companies are in the holiday product business. Both companies have historically sold hundreds of styles of Christmas ornaments under various brands. Here, Midwest knowingly adopted a brand used by Rauch and has been selling ornaments that Rauch specifically sells under that brand. Midwest's conduct was not an honest mistake—it is bold-faced theft. Midwest's conduct should stop and Rauch should be awarded damages for Midwest's bad-faith conduct.

PARTIES, JURISDICTION, AND VENUE

1. Rauch Industries, Inc. is a North Carolina corporation with its principal place of business in the County of New York, State of New York.

2. Midwest CBK is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business at 32057 64th Ave., Cannon Falls, MN 55009.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because it arises under the United States Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et seq.*

4. The Court has personal jurisdiction over the Defendant because its principal place of business is in this jurisdiction, and the infringement complained of occurs in this jurisdiction.

5. Venue is appropriate under 28 U.S.C. § 1391 because Defendant's infringing activities occurred in this District and Defendant resides in this District.

FACTUAL BACKGROUND

A. General Background

6. Rauch creates, markets, and sells ornaments as well as Christmas-themed items.

7. One of Rauch's most significant brands of ornaments and holiday items is Cristopher Radko®. This brand was originally developed by Christopher Radko and for several years has been one of the best known brands of collectors ornaments on the market. Rauch sells ornaments and other products under the Christopher Radko® brand (and other brands) for Christmas and other occasions throughout the year.

8. One of the ornament lines that Rauch sells under the Christopher Radko® brand is SHINY BRITE®. SHINY BRITE® ornaments are holiday-themed ornaments that are an allusion to historic bulb designs. Rauch has created an entire vintage-looking line that has been widely accepted by the consuming public.

9. Rauch sells the SHINY BRITE® ornaments and other Christopher Radko® designs on its website, http://www.christopherradko.com. Moreover, the SHINY BRITE® line is sold in specialty retail stores throughout the United States and in high-end department stores such as Macy's. Most notably, as it has for many years, Christopher Radko® maintains large showrooms at major tradeshows where it sells its SHINY BRITE® ornaments.

10. Rauch owns trademark registrations for the SHINY BRITE® mark including United States Trademark Registration Numbers 2,640,355 and 2,480,202.

11. Midwest is a direct competitor of Rauch with respect to holiday ornaments.

12. For many years both Midwest and Rauch have sold holiday ornaments through the same outlets and channels of trade, including at large trade shows for major holiday retailers.

13. Prior to January of 2017, Midwest was aware of Rauch's use of the SHINY BRITE® trademark. Indeed, the parties attend the same trade shows where ornament sales to

both small and large retailers typically occur. Moreover, on information and belief, as a competitor of Rauch Midwest has reviewed Rauch's website and offerings there.

14. Two of the ornaments that Rauch sells under the SHINY BRITE® mark are the "Silent Night Ball Ornament" and "Merry Christmas Ball Ornament."

B. Midwest Infringes Rauch's SHINY BRITE® trademarks.

15. Each year Atlanta hosts one of the largest holiday industry tradeshows, the Atlanta International Gift and Home Furnishings Market (the "Show").

16. This year the Show opened on January 10, 2017.

17. Both Midwest and Rauch attended the Show, and their tradeshow booths were located on the same floor and not far from one another in the same general area as prior years.

18. On January 10, 2017, representatives of Rauch were walking the Show and saw that Midwest had created a large display using a "Shiny Bright" mark. The goods Midwest was selling and offering for sale under the "Shiny Bright" mark were substantially similar to, and in some cases nearly exactly the same as, Rauch's offerings under its SHINY BRITE® mark. Moreover, Midwest's offerings were comprised largely of the same style of vintage-looking products.

19. On January 10, 2017, counsel for Rauch sent Midwest a cease and desist letter demanding that Midwest take down its infringing booth and stop sales of products bearing the "Shiny Bright" mark. Rauch also required an accounting and samples of any other products being sold under the "Shiny Bright" mark.

20. Midwest responded through counsel and agreed to take down its display of the "Shiny Bright" mark at the Show. Although Midwest asserted that it believed the dispute was concluded with it taking down the display, Rauch sought additional information concerning products, offerings, and marketing materials.

21. Midwest also provided a copy of its 2017 catalog which showed the products Midwest was selling under the "Shiny Bright" mark.

22. Upon review of the Midwest catalog, Rauch discovered for the first time that Midwest was selling direct knock-off versions of Rauch's ornament designs. These ornaments were not merely similar, but 100% replicas of the very same vintage-looking ornaments that Rauch was selling.

23. Importantly, Rauch sells hundreds of different ornaments, as does Midwest. But, Midwest was offering under the very same name, e.g. "Shiny Bright," identical ornaments that Rauch was selling under its SHINY BRITE mark.

24. Specifically, at page 235 of Midwest's 2017 catalog Midwest is advertising and offering for sale knockoff copies of Rauch's SHINY BRITE® "Silent Night Ball Ornament" and "Merry Christmas Ball Ornament." Midwest's infringing ball ornaments are depicted below:

Silent night
"Silent Night" Ball Ornament.
Glass. 2 5/8" x 2 5/8" x 2 5/8",
[redacted]*
Merry Christmas
"Merry Christmas" Ball Ornament.
Glass. 2 5/8" x 2 5/8" x 2 5/8",
[redacted]*

25. Rauch's SHINY BRITE® "Silent Night Ball Ornament" and "Merry Christmas Ball Ornament" are shown below:

Silent
night

26. Midwest's sale of identical ornaments under an identical mark can hardly be labelled coincidence.

27. Midwest's use of the "Shiny Bright" mark infringes Rauch's registered trademarks.

28. In light of Midwest's knowledge of Rauch's SHINY BRITE® trademarks and its copying of Rauch's SHINY BRITE® "Silent Night Ball Ornament" and "Merry Christmas Ball Ornament" it is clear that Midwest's intends to confuse consumers into believing its products are associated with Rauch's products, and it intends to trade on the goodwill Rauch has established. Midwest is also confusing individuals in the trade concerning the source and affiliation of the SHINY BRITE® products.

29. Midwest's trademark infringement is intentional and willful.

30. Midwest's trademark infringement has caused Rauch damages.

31. In light of the undeniable trademark infringement committed by Midwest, Rauch subsequently demanded that Midwest withdraw its catalogs. Midwest refused. Instead, Midwest attempted to avoid remedying its egregious conduct by downplaying the infringement.

32. Rauch has suffered and will suffer both irreparable harm and damages as a result of Midwest's actions. Midwest's ongoing infringing sales to retailers must be stopped, and the products must not be permitted to reach store shelves. Additionally, Rauch seeks an accounting of all products sold by Midwest under the Shiny Bright mark so that appropriate damages may be determined.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Trademark Infringement Under 15 U.S.C. § 1114)

33. Rauch incorporates the foregoing paragraphs as if fully set forth herein.

34. Rauch owns United States Trademark Registration Numbers 2,640,355 and 2,480,202 for the mark SHINY BRITE®.

35. Rauch's trademark registrations are incontestable pursuant to 15 U.S.C. § 1065.

36. Midwest has used in commerce reproductions, copies, or colorable imitations of Rauch's trademarks in connection with the sale, offering for sale, distribution or advertising of its goods in violation of 15 U.S.C. § 1114.

37. Midwest's actions are likely to cause confusion, to cause mistake, or to deceive.

38. Midwest is infringing Rauch's registered trademarks with full knowledge of those marks, and its actions are willful, intentional, and knowing.

39. The intentional nature of Rauch's acts complained of herein makes this an exceptional case under 15 U.S.C. § 1117(a).

40. As a direct and proximate result of Midwest's infringements, actions, and practices, Rauch has been and will continue to be damaged and suffer irreparable harm unless Midwest is enjoined from any further use of its infringing mar or colorable imitations thereof.

SECOND CLAIM FOR RELIEF
(Trademark Infringement Under 15 U.S.C. § 1125(a))

41. Rauch incorporates the foregoing paragraphs as if fully set forth herein.

42. Rauch owns United States Trademark Registration Numbers 2,640,355 and 2,480,202 for the mark SHINY BRITE®.

43. Rauch's trademark registrations are incontestable pursuant to 15 U.S.C. § 1065.

44. Rauch has used its registered trademarks in interstate commerce for at over 15 years.

45. Midwest was aware of Rauch's SHINY BRITE® trademarks prior to January 1, 2017.

46. Midwest's use of the "Shiny Bright" mark has caused and is likely to cause confusing, reverse confusion, mistake or to deceive in violation of the Lanham Act.

47. Midwest is infringing Rauch's registered trademarks with full knowledge of those marks, and its actions are willful, intentional, and knowing.

48. The intentional nature of Rauch's acts complained of herein makes this an exceptional case under Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

49. As a direct and proximate result of Midwest's infringements, actions, and practices, Rauch has been and will continue to be damaged and suffer irreparable harm unless Midwest is enjoined from any further use of its infringing mar or colorable imitations thereof.

THIRD CLAIM FOR RELIEF
(Unfair Competition Under 15 U.S.C. § 1125(a))

50. Rauch incorporates the foregoing paragraphs as if fully set forth herein.

51. By unlawfully using colorable and confusingly similar imitations of Rauch's SHINY BRITE® trademarks in connection with the advertising and sale of goods substantially similar to those advertised and offered for sale by Rauch, Midwest has made false and

misleading representations of fact which are likely to cause the public to mistakenly believe that Midwest's business activities and goods originate from, are sponsored by, or in some way are associated with Rauch. Such activities constitute false designations of origin, false descriptions, and false representations and are likely to cause Rauch's SHINY BRITE® trademarks to lose their significance as an indicator of origin.

52. Midwest is using the infringing mark with full knowledge of Rauch's SHINY BRITE® trademarks. Accordingly, Defendant's actions are willful, intentional, and knowing.

53. As a direct and proximate result of Midwest's actions, conduct and practices, Rauch has been damaged and will continue to be damaged and suffer irreparable harm.

FOURTH CLAIM FOR RELIEF
(Minnesota Uniform Deceptive Trade Practices Act- Minn. Stat. §§ 325D.43-325D.48)

54. Rauch incorporates the foregoing paragraphs as if fully set forth herein.

55. By unlawfully using colorable and confusingly similar imitations of Rauch's SHINY BRITE® trademarks in connection with the advertising and sale of goods substantially similar to those advertised and offered for sale by Rauch, Midwest has made false and misleading representations of fact which are likely to cause the public to mistakenly believe that Midwest's business activities and goods originate from, are sponsored by, or in some way are associated with Rauch.

56. Midwest's activities violate Minn. Stat. §§ 325D.43-325D.48.

57. Rauch is and has suffered irreparable harm and damages as a result of Midwest's conduct in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Rauch prays that this Court enter judgment in its favor and against Midwest and award the following relief:

A. Finding that Midwest has infringed Rauch's trademarks and enjoining Midwest from further infringement;

B. Requiring Midwest to recall any advertising materials or products that are found to be infringing Rauch's trademarks;

C. Requiring Midwest to destroy any advertising materials or products that are found to be infringing Rauch's trademarks;

D. Finding that Midwest has infringed Rauch's trademarks and awarding damages caused by Midwest to Rauch including but not limited to its lost profits and/or costs of corrective advertising;

E. Disgorging Midwest's profits;

F. Finding this case is an exceptional case pursuant to 25 U.S.C. § 1117 and awarding Rauch its costs, attorneys' fees and exemplary damages;

G. Awarding Rauch its attorneys' fees as permitted by statute.

H. Awarding Rauch prejudgment and post judgment interest;

I. Awarding such further and additional relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Rauch demands trial by jury in this action of all issues so triable.

Dated: April 21, 2017

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Dated: April 21, 2017

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